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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

AARON SENNE, et al., Individually and on  
Behalf of All Those Similarly Situated;

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF  
BASEBALL, an unincorporated association  
doing business as MAJOR LEAGUE  
BASEBALL; et al.;

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated  
with 3:14-cv-03289-JCS)

**CLASS ACTION**

**PLAINTIFFS' PROPOSED PLAN OF  
NOTICE TO RULE 23(B)(3) CLASS  
MEMBERS**

Judge: Honorable Joseph C. Spero

1 **I. INTRODUCTION**

2 In accordance with the Court’s Superseding and Case Management and Pretrial Order (ECF  
3 No. 843), Plaintiffs submit their plan for providing notice to members of the California Class,  
4 Arizona Class, and Florida Class (collectively “Classes”) certified pursuant to Federal Rule of Civil  
5 Procedure (“Rule”) 23(b)(3). The notice plan proposed by Plaintiffs and the notice expert—JND  
6 Legal Administration (“JND”) – comports with Rule 23 and due process. Consistent with Rule 23,  
7 the notice plan provides “the best notice practicable under the circumstances, including individual  
8 notice to all members who can be identified through reasonable effort.” Rule 23(c)(2)(B). This will  
9 be accomplished through direct notice via both an Email Notice and Postcard Notice to all known  
10 members of the Classes (“Class Members”) for whom a mailing address or an email address is  
11 available. Using two means of direct notice to the Class Members will ensure it reaches the vast  
12 majority of Class Members in conformance with Rule 23 and due process.

13 The notice documents also comport with Rule 23 by providing necessary information for  
14 Class Members to understand the nature of the lawsuit and exercise their rights to remain a part of  
15 or opt-out of the Classes. The notice documents are written in plain, easy-to-understand language  
16 and allow potential class members to make informed decisions. The Email Notice and Postcard  
17 Notice will direct class members to a case website to obtain further information regarding the case,  
18 including the long form notices, frequently asked questions, and important case documents. A phone  
19 number will also be offered to answer frequently asked questions. Thus, Plaintiffs ask that the Court  
20 approve Plaintiffs’ notice plan and dissemination of notice to the Class.

21 While the parties attempted to reach agreement on the form and manner of notice proposed  
22 by plaintiffs, they have been unable to do so. To ensure the timely dissemination of the Class notice  
23 by January 29, 2021 (as ordered by the Court), the parties have agreed that defendants will file their  
24 response to Plaintiffs’ Notice Plan by December 22, 2020 and Plaintiffs will file their reply by  
25 January 4, 2021.

26 **II. PLAINTIFFS’ NOTICE PLAN SHOULD BE APPROVED**

27 Rule 23(c)(2)(B) governs the form and manner of notice “[f]or any class certified under Rule  
28 23(b)(3).” Notice to class members must be “the best notice practicable under the circumstances,

1 including individual notice to all members who can be identified through reasonable effort.” Fed.  
 2 R. Civ. P. 23(c)(2)(B). In 2018, Rule 23(c)(2)(B) was amended to provide that, “[t]he notice may  
 3 be by one or more of the following: United States mail, *electronic means*, or other appropriate  
 4 means.” (emphasis added).

5 Neither Rule 23 nor due process requires receipt of actual notice by all class members. *Silber*  
 6 *v. Mahon*, 18 F.3d 1449, 1453-1454 (9th Cir. 1994) (concluding that the standard for class notice  
 7 is “best practicable,” rather than “actually received” notice); *Mullane v. Central Hanover Bank &*  
 8 *Trust Co.*, 339 U.S. 306, 319 (1950) (“notice reasonably certain to reach most of those interested in  
 9 objecting is likely to safeguard the interests of all, since any objections sustained would inure to the  
 10 benefit of all.”). *Juris v. Inamed Corp.*, 685 F.3d 1294, 1321 (11th Cir. 2012) (“Courts have  
 11 consistently recognized that due process does not require that class members actually receive  
 12 notice.”).

13 Rule 23(c)(3)(B) also requires the notice documents to explain the class members’ rights “in  
 14 clearly and concisely state[d]” “plain, easily understood language.” A notice document is “adequate  
 15 if it may be understood by the average class member.” 4 *Newberg on Class Actions* § 11.53 (4th  
 16 ed. 2002) (“*Newberg*”). The notice plan proposed by Plaintiffs with the assistance of the notice  
 17 provider, JND, satisfies the requirements of Rule 23 and should be approved by the Court.

18 **A. The Notice Plan Complies With Rule 23 and Due Process**

19 Since the Class Members in this case are minor league baseball players who either had or  
 20 have a direct employment relationship with Defendants, their contact information is available  
 21 through Defendants’ records. Pursuant to Plaintiffs’ request, Defendants have agreed to provide  
 22 available email and mailing addresses for potential Class Members to JND by January 8, 2021. *See*  
 23 Declaration of Bobby Pouya (“Pouya Decl.”) ¶ 3.

24 After receiving and processing the Class Member contact information, JND will send direct  
 25 notice to the Classes in the form of: (1) an Email Notice to all potential Class Members for whom  
 26 Defendants provide an email address; and (2) the Postcard Notice to all Class Members for whom  
 27 Defendants provide a valid mailing address. *See* Declaration of Gina M. Intrepido-Bowden  
 28 (“Intrepido-Bowden Decl.”) ¶¶ 10; 14-16. This proposal, which relies on two methods of direct

1 notice, is designed to reach the vast majority of Class Members, and therefore comports with both  
 2 due process and Rule 23. *Id.* ¶¶ 13, 23, 43. Indeed, the sending of both the Email Notice and Postcard  
 3 Notices is more robust than a number of approved notice plans which rely on email as the primary  
 4 means of notice, with postcards sent to class members with invalid or unavailable email addresses.  
 5 *See e.g. Keirsev v. eBay, Inc.*, No. 12-cv-01200, 2014 WL 644697 \* 1 (N.D. Cal. Feb. 14, 2014)  
 6 (notice plan disseminated via email with “postcard notice to those persons whose emails were  
 7 undeliverable and whose addresses were available.”); *Bostick v. Herbalife Int’l of Am., Inc.*, No. 13-  
 8 cv-02488, 2015 WL 12745798, at \*3 (C.D. Cal. Aug. 18, 2015) (notice plan relying on email notice  
 9 supplemented by summary postcard notices to class members with invalid or unavailable email  
 10 addresses); *Morey v. Louis Vuitton N. Am., Inc.*, No. 11-cv-1517, 2014 WL 109194, at \*3 (S.D. Cal.  
 11 Jan. 9, 2014) (notice plan including emailing a summary email notice to class members with valid  
 12 email addresses and a summary postcard notice to class members who were not sent the email  
 13 notice).

14 JND will take numerous steps to maximize the reach of both the Email and Postcard Notice.  
 15 Intrepido-Bowden Decl. ¶ 17-22. For the Email Notice, JND will eliminate “invalid email and spam  
 16 traps that would otherwise negatively impact deliverability.” *Id.* ¶¶ 19-20. For the Postcard Notice,  
 17 JND will run the mailing addresses through the United States Postal Service (“USPS”) National Change  
 18 of Address (“NCOA”) database. *Id.* ¶ 22. JND will also track all Postcard Notices returned  
 19 undeliverable and attempt to re-mail the notice using available forwarding addresses and other  
 20 reasonable means available. *Id.*

21 The Email Notice and Postcard Notice will provide important information about the lawsuit,  
 22 and they will also direct Class Members to a toll free phone number, email address and case website  
 23 to obtain further information. *See* Intrepido-Bowden Decl. ¶ 24-25, Ex. B (Email Notice), Ex. C  
 24 (Postcard Notice). The case website will include detailed long form notices for the California Class,  
 25 Arizona Class, and Florida Class (collectively the “Long Form Notices”), along with other important  
 26 court documents and answers to frequently asked questions. *Id.* ¶ 24, Exs. D-F (attaching the Long  
 27  
 28

Form Notices).<sup>1</sup>

Plaintiffs' Notice Plan therefore provides "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Intrepido-Bowden Decl. ¶ 13-14 (quoting Fed. R. Civ. P. 23(c)(2)).

**B. The Notice Documents Adequately Advise Class Members of Their Rights and Can be Understood by the Average Class Member**

The form and content of the notice documents should also be approved by the Court because they "contain an adequate description of the proceedings written in objective, neutral terms, that, insofar as possible, may be understood by the average absentee class member." *Slavkov v. Fast Water Heater Partners I, LP*, No. 14-CV-04324, 2015 WL 6674575, at \*2 (N.D. Cal. Nov. 2, 2015) (quoting *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104 (5th Cir. 1977)).

As set forth above, Plaintiffs' notice plan calls for the Email Notice and Postcard Notice to be sent directly to all Class Members for whom there is contact information available. These notices contain plain and easy-to-read summaries of the case, and also summarize the Class Members' rights using clear, concise and easily understood language. *See* Rule 23(c)(B); Intrepido-Bowden Decl. ¶¶ 27-30. The Email Notice, Postcard Notice, and Long Form Notices provide all necessary information to the Class Members including: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." *See* Rule 23(c)(2)(B).

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<sup>1</sup> Defendants have suggested that three separate long form notices be prepared for the California Class, Arizona Class, and Florida Class. Plaintiffs initially proposed a single long form notice, but have agreed to post three Long Form Notices on the case website in order to minimize disputes between the parties. However, Plaintiffs object to mailing multiple Long Form Notices to the Class Members because of the potential for confusion. *See* Intrepido-Bowden Decl. ¶ 30 ("Sending multiple Long Form Notices to the Class Members via mail, [ ] may result in Class Member confusion."); *see also* *Makaeff v. Trump University, LLC*, 2015 WL 5638192, \* 3 (S.D. Cal. Sept. 21, 2015) (combining notice of two certified class action lawsuits into a single notice, in order to minimize confusion, increase efficiencies, and reduce administrative burdens).

1 The Email and Postcard notices further direct Class Members to a case website and toll free number  
 2 where class members can obtain additional information regarding the lawsuit and their rights,  
 3 including the Long Form Notices and other case documents. *See id.*<sup>2</sup>

4 This type of notice plan, using summary notices sent via postcard or email and then allowing  
 5 class members to view additional information on a case website, has been commonly used and  
 6 recognized as an appropriate, efficient, and effective means of providing notice to the Class  
 7 Members. *See* Intrepido-Bowden Decl. ¶¶ 29-30 (citing to multiple cases utilizing similar notice  
 8 plans); *see also* Keirse, 2014 WL 644697 \* 1 (approving notice plan relying on email and postcard  
 9 notices supported by a class website); *Bostick*, 2015 WL 12745798, at \*2-3 (notice plan relying on  
 10 summary email and postcard notices, with long form notice available on the settlement website);  
 11 *Morey*, 2014 WL 109194, at \*3 (same); *Baker v. SeaWorld Entm't, Inc.*, No. 14-CV-2129, 2020  
 12 WL 818893, at \*3 (S.D. Cal. Feb. 19, 2020) (same).

13 Therefore, Plaintiffs' notice documents comply with the form and content requirements of  
 14 Rule 23 and should be approved by the Court.

15 **III. THE PARTIES PROPOSED BRIEFING SCHEDULE REGARDING**  
 16 **DEFENDANTS' OBJECTIONS TO THE NOTICE PLAN**

17 The Court's Superseding Case Management Pretrial Order required the parties to submit the  
 18 Class Notice for Court Approval by December 11, 2020 and notice to be disseminated by January  
 19 29, 2021. ECF No. 843, at p. 3.<sup>3</sup> Prior to this submission, the parties met and conferred regarding  
 20 the form and manner of notice to the Class. *See* Pouya Decl. ¶ 4. During the meet-and-confer  
 21 process, the parties resolved several disputes, but Defendants have indicated they still have  
 22 objections to the form and manner of notice proposed by Plaintiffs. *See id.*

23 The parties have agreed to the following briefing schedule regarding Defendants' objections  
 24  
 25 \_\_\_\_\_

26 <sup>2</sup> As set forth in footnote 1 above, Plaintiffs and JND agree that separate Long Form Notices may  
 27 be posted on the case website, but do not agree that separate Long Form Notices should be mailed  
 to the Class Members.

28 <sup>3</sup> Defendants have agreed to provide class member contact information to JND by January 8, 2020.

1 to Plaintiffs' notice plan:

- 2 • Defendants shall file their response to Plaintiffs' Notice Plan by December 22, 2020;
- 3 • Plaintiffs shall file their reply in support of their Notice Plan by January 4, 2021.

4 **IV. CONCLUSION**

5 For the reasons set forth in this brief, Plaintiffs respectfully request that the Court enter an  
6 order approving the form and manner of notice proposed by Plaintiffs and the notice provider JND.

8 DATED: December 11, 2020

Respectfully submitted,

9  
10 /s/ Bobby Pouya

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